NOTES OF CASES.

Accident Insurance—Expiration of Policy on Holiday.—In Upton *v.* Travelers' Ins. Co., 178 Pac. 851, the Supreme Court of California held that an accident insurance policy expiring on a holiday does not cover an accident occurring the next day.

The court said in part: "The action was upon a contract to insure the plaintiff against accidents. The policy was issued on April 12, 1912, and bore that date. It contained the provision that 'this policy is issued for a term of six months, beginning at 12 o'clock noon, standard time, on the 12th day of April, 1912, and ending at the same hour, but it may be renewed, subject to all its provisions, from term to term thereafter by payment of the premium in advance.' It was renewed from time to time, the last renewal taking place on April 12, 1914. The accident causing the injury for which plaintiff seeks recovery in this action occurred on October 13, 1914. This was one day after the policy had expired, and consequently the defendant is not liable. The fact that October 12th was a legal holiday does not aid the plaintiff. The policy expired by its terms on the 12th day of October at noon. The accident does not come within the provisions of §§ 10 or 11 of the Civil Code, or the corresponding provisions of the other Codes. Section 10 declares that the time in which any act is provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. The accident, of course, was not an act provided to be done by any law, or by the policy. Therefore this section has no application. Section 11 provides that whenever any act of a secular nature is appointed by law or contract to be performed upon a particular day, which falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. The policy did not appoint the accident as an act to be performed at any time, or at all; consequently that act does not fall within this section.

Breach of Promise of Marriage—Statute of Limitations.—In Crosset *v.* Brackett, 105 Atl. 5, the Supreme Court of New Hampshire affirmed the judgment of the lower court in favor of the plaintiff upon the following facts: Soon after making a contract to marry in 1898, the parties began to live together as man and wife and continued the relation until 1917, when the woman brought an action for breach of promise of marriage.

The court said: "The defendant's contentions are largely based upon a misconception of the nature of the contract to marry and

of what is necessary to show a breach thereof. After the promise has been made, it is the right of either party to demand performance, and if the demand be reasonable in point of time, etc., a refusal to comply therewith is a breach of the contract, and a cause of action arises. But until such a demand is made and insisted upon, the contract continues in force, unless abandoned by agreement of the parties, or disavowed by one of them.

"'Before a right of action accrues for the breach of a marriage contract, it must be averred and proved that the contract has been repudiated, and such repudiation must be shown by the acts, words, conduct or deed of the party who so repudiates it, and to be without sufficient reason or cause. There must be a refusal to marry or a repudiation in some way of the contract' (Walters *v.* Stockberger, 20 Ind. App. 277, 50 N. E. 763).

"The reasons which induce one of the parties to refrain from demanding present performance of the agreement are immaterial. If the question were whether the agreement to postpone for a fixed time were itself a binding contract, so that until the time had elapsed neither could demand performance, the question of the legality of the consideration for it would be presented. But no such question arises upon the evidence in this case. The plaintiff does not rely upon such promise to make out her cause of action. The evidence of their relations and negotiations is material to the plaintiff's case merely to show that the original promise to marry had not been abandoned.

"The original promise and the ultimate refusal to perform being shown, it was incumbent upon the defendant to excuse or justify the refusal. The mere fact that there had been no disavowal or abandonment at an earlier date was sufficient for the plaintiff's purposes, and proving that failure to disavow was induced by illegal acts in which both participated would not show that there was a disavowal.

"Since the cause of action arose at the time of breach and not when the original promise was made, the action was seasonably brought. The plaintiff's evidence was that there was no breach until shortly before suit was begun. It is of no consequence that she might have made and insisted upon a demand for performance at a much earlier date. It is not the right to demand performance, nor even the demand which creates the right to sue, but the refusal to comply with the demand, or the disavowal of the contract when no demand is made. If the defendant had desired to terminate the contract at an earlier date, he could have done so at any time. As he did not do so, he cannot claim the protection of the Statute of Limitations. He is sued for breaking the contract, not for making it. The nonsuit was properly denied."